

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

ENTERED  
AUG 24 2017  
David J. Bradley, Clerk  
FILED

DEVADIP CARLOS ESPERICUETA  
Movant

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vs.

CIVIL ACTION NO. M-13-205

UNITED STATES OF AMERICA  
Respondent

Clerk of Court

**REPORT & RECOMMENDATION**

Pending before the Court is Movant's motion for leave to proceed in forma pauperis ("IFP") on appeal from the Court's dismissal of his claims pursuant to 28 U.S.C. § 2255. (Dkt. Entry No. 26.) This motion was referred to the undersigned pursuant to 28 U.S.C. § 636(b).

Having considered Plaintiff's pleading, the record, and the relevant law, the undersigned respectfully recommends that Plaintiff's motion for leave to proceed IFP on appeal be **DENIED** as moot.

**I. FINDINGS**

This IFP application is moot because the docket sheet in this civil case and the appellate docket sheet reflect that Movant has already paid the entire appellate filing fee. Accordingly, the motion to proceed IFP on appeal should be denied as moot.

**II. CONCLUSION**

***Recommended Disposition***

Having considered Movant's pleading, the record, and the relevant law, the undersigned respectfully recommends that Movant's motion to proceed IFP on appeal be denied as moot.

***Notice to the Parties***

Within 14 days after being served a copy of this report, a party may serve and file specific, written objections to the proposed recommendations. A party may respond to another party's objections within 14 days after being served with a copy thereof. The district judge to whom this case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the District Court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the District Court, except on grounds of plain error or manifest injustice.

The clerk of this Court shall forward a copy of this document to the parties by any receipted means.

**DONE** at McAllen, Texas, this 24<sup>th</sup> day of August, 2017.

  
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Dorina Ramos  
UNITED STATES MAGISTRATE JUDGE